IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 433 OF 2007
IN
L.C.SUIT NO.6076 OF 1999

Soloman Raj Sigo ...Appellant
Vs.
The Municipal Corporation of Gr. Bombay ...Respondents

Mrs. S.A.Dhamale, Advocate for Appellant
Mr. J.J.Xavier, Advocate for Respondents

CORAM: SMT.ROSHAN DALVI,J.
DATED: 14TH JUNE, 2007

JUDGMENT (PER SMT. ROSHAN DALVI, J.)

1. The Appellant has challenged the judgment dated 31st July, 2003 of the Bombay City Civil Court in Suit No.6076 of 1999 dismissing the Appellant's Suit in this Appeal.

2. The Appellant is in possession of a structure in Bangur Nagar, Goregaon (West), Mumbai-400 090. The Appellant carries on business in the said structure.

3. The Respondents' Ward Officer issued notice dated 3rd August, 1998 to the Appellant for removal of the structure

which was stated to be unauthorised, in which the Appellant was carrying on business without license from the BMC. The Appellant filed a suit in the Bombay City Civil Court being Suit No.3647 of 1998 and obtained ad-interim injunction order on the next day i.e. On 4th August, 1998 restraining the Defendants from demolishing the said structure. The Appellant gave notice of the order to the Ward Officer of the Respondents on 4th August, 1998.

4. On 22nd February, 1999 an order came to be passed in the Appellant's suit restraining the Respondents from demolishing or removing the Appellant's structure until they followed due legal process.

5. The Respondents followed the legal process of issuing notice under Section 314 of the BMC Act on 21st May, 1999 following the directions passed in the Appellant's Suit No.3647 of 1998.

6. The Appellant replied to the said notice on the very next day i.e. On 22nd May, 1999 contending that the suit structure is not on a public street so as to form any obstruction or any encroachment, to protect the said structure the Appellant filed the present Suit. Upon evidence being led and considered and issues being framed

therein, the impugned judgment has been passed. In essence what is to be seen in the said suit and what is to be seen in this Appeal is whether the notice issued under Section 314 of BMC Act on 21st May 1999, is illegal and whether the Plaintiff proves the authorisation of the suit structure so as to have it protected by the order of an injunction. Further issues which came to be framed and considered in the said suit following upon the aforesaid issues is whether the Plaintiff's structure is at Plot No.161, Part of C.T.S. No.1050 of Goregaon (W), Mumbai-400 090 and is not on public road.

7. The learned trial Judge upon considering the evidence placed before him answered the aforesaid issues in the negative and dismissed the Suit.

8. It is the case of the appellant/plaintiff that his structure is authorised structure and is not on the road and consequently it cannot be demolished under the notice impugned in the above suit, which is issued under Section 314 of the BMC Act. The Appellant has relied upon essentially 3 documents, being 2 NA orders and an electricity bill. The NA orders exhibited in evidence are in respect of a structure in Bangur Nagar on Survey No.161. The N.A. Orders are issued in favour of one Laxmi Asbestos Products

Ltd. The N.A. Orders are dated 15th April, 1998 and 29th June, 1998. These N.A. Orders at best show the Appellant's structure in existence in 1998.

9. The Appellant has also relied upon and produced the electricity bill of May, 1998 also issued in favour of M/s. Laxmi Asbestos Products Ltd. At Bangur Nagar, Goregaon (W), Mumbai-400 090. (It may be mentioned that the Appellant is stated to be carrying on business in the name of M.M. Electricals).

10. The learned Judge has considered each of these documents of the Plaintiff. All the documents being of 1998, they do not show authorisation or toleration of whatever be the Appellant's structure mentioned therein. The affidavit of evidence of the Plaintiffs does not rely upon any of the documentary evidence with regard to the immovable properties which the appellant claimed.

11. The notice of the suit structure is issued under Section 314. The structure is stated to be on public road. The Appellant must show and prove that the structure is not on public road. Mrs. Dhamale on behalf of the appellant has argued that the appellant's structure is within the building wall of one Utsav Co-operative Housing Society at Bangur

Nagar. For proving such a case of the appellant, the most material document the photograph of the structure. The photograph of the suit structure must show the suit structure from close as well as afar. Much depends on the location of the structure which can be evidenced best from the photograph. In the entire extensive evidence of the appellant/plaintiff as well as in the cross examination of the Respondent's witness there is no reference to any photograph. The Defendants have got produced certain photographs showing how the structure is on the public road by the side of a tree and outside the building wall of the said Utsav Co-operative Housing Society by the side of a gutter. In the interest of justice the appellant has been directed to produce photographs of the suit structure. The appellant has produced the photographs as directed. There can be not the slightest doubt that a structure is on the road. It is outside the boundary wall of the Society building. It is by the side of a tree. It shows a gutter between the rear wall of the structure and the boundary wall of the Society. Consequently it is seen that the notice under Section 314 of the BMC Act is correctly issued. The Respondents have, therefore, followed due legal process as directed in the appellant's earlier Suit No.3647 of 1998.

12. Pursuant to the order of injunction pending the suit no

action has been taken upon the said notice. The Appellant has been allowed to lead whatever evidence he deems fit to show and to prove the existence or authorisation of the suit structure and the fact that it is not on the road so as to successfully challenge the impugned notice issued under Section 314 of the BMC Act. The impugned judgment has been passed dismissing the Appellant's Suit.

13. The Appellant has sought to rely upon the same documents in this Appeal to contend that the notice is bad in law. The Appellant's Advocate contends that the photograph produced by the Appellant also shows that the structure is not on public road. The photographs as well as the argument defy reasoning and explanation. The photographs are self explanatory. Authorisation of the structure is not shown. The notice as well as the impugned judgment are seen to be correct and do not suffer from any infirmity.

14. The Appellant has contended for the first time in Appeal that his structure is in a slum and is, therefore, required to be protected. The entire plaint in the Suit as well as the affidavit of evidence does not show any reference to any slum declaration. No notification of declaration of slum is produced in the Suit. The affidavit of examination-in-chief

bears no reference thereto. The cross examination of the Respondent's Advocate does not even put such a case. No further case can be made out in Appeal. Nevertheless, in the interest of justice even that is considered in this Appeal. The notification now produced by the Appellant is dated 10th November, 1977, well after the filing of both the suits by the Appellant. The notification is in respect of Bhatsingh nagar. It shows CTS No.161- part admeasuring 372 sq. mtrs. Declared as slum. It gives the description of boundaries. On the **East** of the declared slum is Motilal Nagar as shown in the notification. The suit structure is in Bangur Nagar. The complete address of the Appellant given by himself in his initial Suit No.3647 of 1998 is as follows :-

> Mr. Soloman Raj Sigo
> R/o.311/2475, Motilal Nagar
> No.2, M.G. Road, Goregaon (West)
> Mumbai-400 090, Running a Business
> of Electrical at M.M. Electricals
> Opp: Avadhpuri Co-operative Hsng. Society
> Bangur Nagar, Goregaon (W)
> Mumbai-400 090.

15. Therefore, as per the Appellant's case he resides in Motilal Nagar and carries on business in Bangur Nagar. He does not reside or carry on business in Bhatsingh Nagar. However, since the NA order is in respect of a property of Survey No.161- part which is addressed to the Appellant, he contends that, that NA notice is for the suit structure and

that the suit structure is on CTS No.161 part which is declared as slum and, therefore, is required to be protected. It is seen that only a part of Survey No.161 is declared a slum. That is where Bhatsingh Nagar is. The Appellant's structure is not on that part. It is to the East of that part in Bangur Nagar.

16. For that purpose the precise description of the suit property and its location is required to be seen. The sketch plan annexed as Exhibit-E to the Appellant's/Plaintiff's suit filed in the Bombay City Civil Court in which the impugned judgment is passed shows the link road flung by Motilal Nagar and Bangur Nagar. Bangur Nagar is to the East of Motilal Nagar. The slum declaration notification now relied upon by the Appellant, shows that Motilal Nagar is on the Eastern boundary of Bhatsingh Nagar. Hence, Bhatsingh Nagar is to the West of Motilal Nagar which in turn is to the West of Bangur Nagar. The area which is declared as slum is to the West of Motilal Nagar. The Appellants' structure is to the East of Motilal Nagar locality. The Appellant's structure is falling on the linking road where Motilal Nagar is situated. It is therefore, not in any slum. It is in fact far from any slum. The photograph shows a fully developed area where a new society building has been constructed having its boundary wall falling on the linking road. The Appellant's

structure is outside the boundary wall having a gutter in between the structure of the society wall and falling on the linking road.

17. Even going still further, if the Appellant's structure is declared as slum it could be protected by an order of Injunction if it is in existence prior to 1995. Even that is not shown. The Appellant's documents being the NA orders and the electricity bill are all of the year 1998, the year in which the first suit was filed by the Appellant. In fact all that can be seen is that the documents of the Appellant are of April and May, 1998 and the suit is filed and ad-interim injunction is obtained in July, 1998. That injunction has been continued. Notice under a specified provision of the BMC Act is issued. Such notice under Section 314 requires the Court to see whether the structure is on the road. It is seen to be so. The Plaintiff has been fully heard. The Plaintiff has led evidence, produced documents and argued his suit. The Court considered each of the documents and has ultimately dismissed the suit by the impugned judgment dated 31st July, 2003.

18. The Appellant's structure has been under the Courts' protection from 1998 to 2003. The Advocate for the Appellant now contends that the Appellant had replied the

notice and consequently the DMC of the BMC must pass a reasoned order. That argument is entirely misconceived. Due legal process is required to be followed differently under different provisions of the BMC Act. The process under section 314 of the BMC Act requires a notice to be given for removal of the structure as held in the judgment in the case of Olga Tellis Vs. BMC, 1985 (3) SCC 545. The Appellant's Advocate has relied upon the latest order of the Single Judge of this Court Mr. Justice A.M. Khanvilkar dated 12th October, 2001 to contend that even in case of notice under Section 314 of the BMC Act when a reply is sent by the Appellant the reply has to be considered by the Respondents and an order passed thereupon so as to afford the right of natural justice to the Appellant. It has been observed in that order that an opportunity should be accorded to the parties to whom notice under Section 314 of the BMC Act is issued to produce materials to support their case as to why the proposed action under Section 314 is warranted. That would be notice to show cause and to give them a fair opportunity. Thereafter, if any adverse orders are passed, those parties are required to be informed in writing, and give a week's time from the date of the service of the order before taking the proposed action.

19. It must be appreciated that the said order is passed in

an Appeal from Order refusing interim relief in a suit in which, notice under Section 314 of BMC Act was issued. The Court had to consider the respective merits and demerits of the case of the parties immediately upon the Plaintiff filing the suit challenging the notice under Section 314 of the BMC Act. If an interim order is refused, the Plaintiff loses the opportunity to go to trial to prove his case. In this case the Appellant has been granted interim relief pending the suit. The Appellant's documents have been considered in the suit. Oral evidence has been led. Documentary evidence has been produced. The precise location of the structure has not been shown. The contention with regard to the existence of the structure in the slum has not been taken. The learned Judge has considered the Appellant's case fully. Ample opportunity has been given to the Appellant to prove how the suit notice is invalid and vitiated. The appellant has failed to prove that the structure is not on the road – by non-production of any photograph and in fact sought to, but failed to prove the authorisation of the structure.

20. The Appellant's evidence is showing the existence of the structure only month's prior to his initial litigation. The Appellant's photographs have in fact proved the existence of the structure on the public road. Further documents relied

upon by the Appellants in appeal being xerox copy of the notification (which is not a part of the record of the trial Court) has shown that the different area to the East of the Appellant's structure has been declared slum and not the area where the suit property is, as per his case. The consideration of further documents have in fact shown how the appellant has sought to rely upon documents which do not pertain to the suit structure.

21. It may be mentioned that the party can come to a Court of law when opportunity to him has been refused by an Executive Authority, in compliance of the principles of the natural justice. If the Plaintiff comes to the Court of law and seeks to make out a case, he is afforded ample opportunity to prove his case. If after such opportunity also no case is shown or proved no further opportunity can be granted. If the Court has seen the Appellant's case on merits by considering his own evidence, both oral and documentary, and has decided the case upon the issues framed, no further opportunity can be given to the Appellant to appear before the Executive Authority. The judicial process is the culmination of all the rights claimed by the Appellant. The completion of judicial process by its adjudication culminates that right. It would be a mockery of law for the Court to consider the evidence of the Appellant and then to relegate

him to an Executive Authority for passing an order. That stage has long passed. The appellant has been given full and free liberty to prove his case. He has sought to do the same and has failed. Right of natural justice is amply given and fully utilised. In fact the further right, even aside from the rights of an Appellant in first appeal has been given in this appeal to the appellant. Even the documents relied upon by the appellant not forming the part of the record are allowed to be produced and considered. No case whatsoever is made out. The Appeal is dismissed.

22. The interim order if any in this Appeal shall however, continue for a period of 6 weeks.

(SMT. ROSHAN DALVI, J.)